

1 investigation, or the investigations be able to reach
2 accurate answers about what had caused the explosion?

3 A. Yes.

4 MR. RUBY: Nothing further, Your Honor.

5 THE COURT: Cross-examination?

6 CROSS EXAMINATION

7 BY MR. WILMOTH:

8 Q. Good afternoon, Mr. May. I have read the information
9 that, that the United States Attorney has filed against you.
10 It's, what, ten pages. I, I didn't see the name Elbert
11 Stover in that information anywhere. Did you?

12 A. No, sir.

13 Q. Do you know Mr. Stover?

14 A. Yes.

15 Q. How do you know him?

16 A. I knew he was over the security guards. I probably
17 haven't talked to him maybe half a dozen times, just maybe
18 on the phone or sometimes he would be up to the office.

19 Q. Five or six times during your entire acquaintance?

20 A. Yes.

21 Q. Okay. Were you ever told by Elbert Stover to call down
22 into the mine?

23 A. No.

24 Q. You did, in fact, call down into the mine, though, did
25 you not?

1 A. Yes.

2 Q. Several times?

3 A. Yes.

4 Q. And you directed others in the mine office to do so,
5 did you not?

6 A. Yes.

7 Q. So -- and I'm not trying to lean on you here. But you
8 actually did advance notice; right?

9 A. Yes.

10 Q. Okay. To your knowledge, did Elbert Stover ever call
11 underground himself?

12 A. Not to my knowledge.

13 Q. And after 1999 or so, isn't it true that the way you
14 folks in the mine office would learn that an inspection had
15 begun is that you would hear it called over the radio?

16 A. Called over the radio or by phone, yes.

17 Q. Even after 1999 were there calls by phone?

18 A. Yes. I was only there in 2008 to 2010.

19 Q. Okay. But there were calls even then?

20 A. Yes.

21 Q. Were any of them from Elbert Stover himself?

22 A. Not to my knowledge.

23 Q. Okay. That's all I have. Thank you, sir.

24 THE COURT: Redirect, Mr. Ruby?

25 MR. RUBY: No, Your Honor.

1 THE COURT: You can step down, sir.

2 Call your next witness.

3 MR. RUBY: Yes, Your Honor. The United States
4 calls Gina Jones.

5 **GINA JONES, GOVERNMENT'S WITNESS, SWORN**

6 DIRECT EXAMINATION

7 BY MR. RUBY:

8 Q. Ms. Jones, I know the subject that you're here to talk
9 about today is not an easy one for you. So, know that we
10 appreciate you being here and just take the time that you
11 may need to testify. All right?

12 A. Okay.

13 Q. Could you please introduce yourself to the Court.

14 A. My name is Gina Jones.

15 Q. Ms. Jones, did you have a loved one who worked at the
16 Upper Big Branch mine?

17 A. Yes.

18 Q. Who was it?

19 A. Dean Jones.

20 Q. And how was he related to you?

21 A. He was my husband.

22 Q. What did your husband do at UBB?

23 A. He was the section foreman on headgate 22.

24 Q. Was he there on April the 5th of 2010?

25 A. Yes.

1 Am I remembering incorrectly?

2 THE WITNESS: You are not. There's four mandated
3 inspections that are required of underground mines and two
4 of surface mines. We would hope that they're all surprise
5 visits.

6 THE COURT: Uh-huh.

7 THE WITNESS: But that's mandated by Congress to
8 complete that number of complete inspections.

9 THE COURT: All right. Thank you, sir. You can
10 step down.

11 Call your next witness.

12 MR. RUBY: Yes, Your Honor. The United States
13 calls Gary May.

14 **GARY MAY, GOVERNMENT'S WITNESS, SWORN**

15 DIRECT EXAMINATION

16 BY MR. RUBY:

17 Q. Good morning, sir. Would you please tell the Court who
18 you are and what you do.

19 A. I'm Gary May. I work at the UBB mine. I'm currently
20 off on administrative leave.

21 Q. How long have you been a coal miner, sir?

22 A. Around 20 years.

23 Q. And you said you work at the UBB mine. Was that in the
24 past that you worked there?

25 A. Yes.

1 Q. When did you work there?

2 A. I worked there in, around '08 to after the explosion.

3 Q. What was your job at UBB?

4 A. I was mine foreman for a while, and then I was a block
5 superintendent.

6 Q. Okay. Let's start with mine foreman. When did you
7 become the mine foreman at Upper Big Branch?

8 A. Somewhere in '08.

9 Q. What responsibilities did you have in that job?

10 A. I had responsibility from outside to the tailpiece of
11 the feeder on the section.

12 Q. Does that mean that you were responsible for most of
13 the, most of the parts of the mine that were underground?

14 A. Yes.

15 Q. And what responsibilities did you have over that area
16 of the mine?

17 A. The every day in and outs, the belt moves to
18 production, everything of that nature.

19 Q. Did there come a time when you were promoted?

20 A. Yes.

21 Q. When was that?

22 A. It was approximately a year later. I was promoted to a
23 block superintendent. The mines was divided up into two
24 parts, UBB north and UBB south.

25 Q. How did your responsibilities change after your

1 promotion?

2 A. It was more of an outside job versus inside.

3 Q. Is it correct to say that as both mine foreman and mine
4 superintendent you were in charge of the areas of the mine
5 that were under your responsibility?

6 A. Yes.

7 Q. Mr. May, while you were at the Upper Big Branch mine,
8 was there a practice of providing warnings when MSHA
9 inspectors were coming at the mine?

10 A. Yes.

11 Q. Can you tell us from beginning to end how those
12 warnings were communicated?

13 A. It would start -- usually if someone come through the
14 guard shack, there would be a phone call or it would be
15 announced over the radio. It would be "company on the
16 property."

17 Q. Now --

18 A. And --

19 Q. I'm sorry. Go ahead, sir.

20 A. From that point, it would be received at the office.
21 From the office, they would call underground and let them
22 know we had company outside.

23 And when the production crews would get to the section,
24 when the section foreman would start his, load his first
25 buggy in the morning, he was required to call outside and

1 tell us. And once he did that, he would usually ask, "Is
2 there any company outside?"

3 And from that, he would have to call out at 9:00,
4 11:00, and 1:00 with his production report. And usually the
5 same statement was in there, "Is there any company outside?"

6 Q. What was meant by "company"?

7 A. Company meaning in-house company, mine inspectors,
8 state inspectors, anyone going to that area or any area in
9 the mine.

10 Q. Can you give us some examples of other phrases that
11 were used when inspectors came to the mine?

12 A. One that I had talked to another foreman about was it
13 was a hail storm if it was more than one.

14 Q. More than one what?

15 A. Inspector.

16 Q. Are there requirements, Mr. May, that govern the
17 ventilation of the areas of the mine where coal is being
18 cut?

19 A. Yes.

20 Q. Could you tell us what some of those are, please?

21 A. You're required to keep line curtain up within ten foot
22 of the deepest point. And you're required to keep a certain
23 amount of air specified in your ventilation plan in the area
24 deepest being mined.

25 Q. What's line curtain, Mr. May?

1 A. Line curtain is what guides your air from the mouth of
2 the entry up into the deepest point.

3 Q. Why is it important to have line curtain within
4 ten feet of the face?

5 A. To help render and dilute harmless gases.

6 Q. And then why is it important to render and dilute
7 harmful -- first of all, do you mean harmful?

8 A. To keep them from building up and causing an explosion.

9 Q. Do you mean harmful gases, Mr. May?

10 A. Yes.

11 Q. And -- I'm sorry. I interrupted you there. What's the
12 importance of diluting harmful gases?

13 A. To sweep them away.

14 Q. Are there rules, Mr. May, that require coal mines to be
15 kept cleaned up and free of accumulations of loose coal?

16 A. Yes.

17 Q. What's the reason for those rules?

18 A. To keep them from piling up, tripping hazards,
19 explosions.

20 Q. And are there rules, Mr. May, that require rock dust to
21 be spread in coal mines?

22 A. Yes.

23 Q. What's that?

24 A. Within 40 feet of the deepest point to keep -- if an
25 explosion would happen, to keep it from spreading.

1 Q. Thank you, sir. Were there times at the Upper Big
2 Branch mine when ventilation to an area where coal mining
3 was taking place fell short of the legal requirements?

4 A. Was there times? Yes.

5 Q. Were there times at the Upper Big Branch mine when
6 workers got a warning that an inspector was coming and they
7 responded by correcting ventilation violations?

8 A. Yes.

9 Q. Was the purpose of those corrections to cover up the
10 fact from the MSHA inspector that a ventilation violation
11 was taking place?

12 A. Yes.

13 Q. Were there times at the Upper Big Branch mine when
14 workers were warned that inspectors were coming and they
15 responded by cleaning up the accumulations of loose coal
16 that you talked about a minute ago?

17 A. I don't know if it was. But when I was section boss,
18 if I got a warning, that's the things I did. I went across
19 and made sure my ventilation was up the way it was supposed
20 to and curtains and fly pads hadn't gotten tore down.

21 Q. What about rock dust?

22 A. Rock dust was spread. I always spread extra rock dust
23 if I knew someone was coming to make everything look good.

24 Q. How often at the Upper Big Branch mine were warnings
25 given of inspectors coming onto the property?

1 A. A lot.

2 Q. Was it most of the time --

3 A. Yes.

4 Q. -- when an inspector did come on the property?

5 A. Most of the time.

6 Q. And how often did the crews that were underground cover
7 up whatever violations they had on their section when they
8 got that announcement?

9 A. I don't know how often, but if I knew -- like I said,
10 when I was section boss I would go across and make sure that
11 my ventilation was up the way it was supposed to be.

12 Q. Because of that, was it difficult at the Upper Big
13 Branch mine for inspectors to see a working section in the
14 same condition that it existed in just before they got
15 there?

16 A. Yes.

17 Q. Was the Upper Big Branch mine able to avoid citations
18 from MSHA because of the practice of advance warnings and
19 inspections?

20 A. Yes.

21 Q. Did you know, Mr. May, that it was illegal to give
22 advance notice of a mine inspection?

23 A. I knew it was unlawful, yes.

24 Q. Did your superiors at the Upper Big Branch mine know
25 about this practice of giving advance notice of inspections?

1 A. Yes.

2 Q. Did they encourage it?

3 A. They did.

4 Q. Let me ask, Mr. May, you're appearing here today under
5 a plea agreement with my office; is that right?

6 A. Yes.

7 Q. What does that plea agreement require you to plead
8 guilty to?

9 A. Conspiracy to -- 371 conspiracy to impede the Federal
10 Government.

11 Q. All right. Let me ask, Mr. May, are you aware -- and I
12 know this seems like a silly question. But are you aware of
13 an explosion that took place at the Upper Big Branch mine in
14 April of 2010?

15 A. Yes. I was there.

16 Q. How did you first learn of the explosion?

17 A. I had just got outside and been upstairs maybe ten
18 minutes. A big roar from the fan started. Dust started
19 pouring out of the portals. And -- do you want me to go all
20 the way in detail?

21 Q. Just tell us, tell us very briefly what you remember
22 about the explosion, sir.

23 A. And when that happened, I threw my belt and stuff on
24 and I started walking toward the portals. I took my spotter
25 with me. I knew that one my coal crews hadn't been

1 accounted for. And I knew the other one had called from a
2 78 break switch.

3 So, I left on foot going that way and through the dust
4 and everything. I walked up the track entry part of the way
5 and then over into the belt entry. And then I heard a
6 mantrip coming.

7 By that time, it was my barrier section crew. I
8 stopped them, talked to them to make sure everybody was
9 accounted for. And from that point, I proceeded on up the
10 track entry.

11 When I got to the mouth of that section, the dust had
12 cleared and I could see pretty good. There was some guys
13 coming in behind me on a mantrip also, but I knew I had
14 another crew that was coming down that direction.

15 So, I proceeded on and called -- every time I'd come to
16 a phone, I would call outside and tell them what I had and
17 make sure I didn't have no methane or nothing on my
18 detector.

19 And I proceeded on up to what we call Ellis switch. We
20 come through the doors right there. And I talked to them on
21 the phone there, and they said some other guys was already
22 ahead of me.

23 From there, me and a couple more guys went on up the
24 track with a mantrip following us. We come to the next
25 phone and I hollered outside. It seemed like at that point